CRIMINAL APPEAL No.78 OF 1988 (D.B.)

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Against the judgment dated 30.1.1988, passed in Sessions Trial No.320 of 1985 by Shri R.K. Singh, 10th Additional Sessions Judge, Munger.

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1. Bokan Singh
2. Joga Singh @ Jago Singh
3. Surendra Singh @ Suren Singh
4. Achutanand Singh @ Achhita Singh: Appellants

Versus

The State of Bihar : …. ….. Respondent

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For the Appellants: Ms. Anjana Prakash,
Senior Advocate with
Mr. Shivendra Kumar Sinha &
Mr. Rakesh Kumar Sinha No.1,
Advocates.

For the S t a t e: Mr. Lala Kailash Bihari Prasad,
Public Prosecutor.

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P R E S E N T

THE HON'BLE MR. JUSTICE SUDHIR KUMAR KATRIAR

THE HON'BLE MR. JUSTICE SAMARENDRA PRATAP SINGH

****

S K Katriar
&
S P Singh, JJ. All the four appellants have jointly come up in this appeal against the judgment dated 30.1.1988, passed by the learned 10th Additional Sessions Judge, Munger, in Sessions Trial No.320 of 1985 (The State of Bihar Vs. Bokan Singh and three others), whereby appellant no.1 (Bokan Singh) has been convicted under Section 302 of the Indian Penal Code, and has been sentenced to undergo rigorous imprisonment for life.

Furthermore, the four appellants have been convicted under section 201 IPC and have been sentenced to undergo rigorous imprisonment for seven years. Both the sentences are to run concurrently. It may at the outset, be indicated that appellant nos.1, 3 and 4 are full brothers and are the sons of Ramjee Singh, whereas appellant no.2 is the own uncle of the other three appellants. The four appellants have been charged under section 302 read with Section 34, I.P.C. for the murder of Smt. Krishna Devi, wife of appellant no.1, and they have also been charged under section 201 of the IPC.

2. According to the prosecution case, one Ram Janam Singh, son of Ramji Singh of village Salempur, P.S. Surajgarha, District- Munger, had informed the Surajgarha Police Station about the death of Smt. Krishna Devi. The fardbeyan (Exhibit-3) was accordingly recorded on 21.12.1983, at 13.15 hours, alleging therein that about 10 days earlier, the four appellants had in the night of 16.12.1983, at about 12.00 P.M., murdered Krishna Devi (wife of Bokan Singh) and had disposed of the dead body by abandoning it in Garikhai river. Bokan Singh was married to Krishna Devi about five years ago with the daughter of Sitaram Singh of village- Lakshminiya, P.S. Balia. The couple did not sire any child. It was suspected that immoral character of the deceased was the reason for her murder. On the

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basis of these allegations, a formal F.I.R. was drawn up and registered as Surajgarha Police Station Case No.0236 of 1983, dated 21.12.1983, under section 302 read with section 34 as well as section 201 of the IPC. Investigation commenced leading to charge-sheet against the four appellants. Charge-sheet was submitted against them and were put to trial under the aforesaid sections.

3. The prosecution examined altogether 11 witnesses to prove the charges. P.W.1 (Sukhdeo Yadav), P.W.2 (Ram Raksha Singh), P.W.3 (Nand Kumar Singh), P.W.4 (Brahmdeo Singh) are local residents, cultivators by avocation, and have been declared hostile. P.W. 9 (Banarsi Singh) is also a local resident and has also been declared hostile. In view of the position that these prosecution witnesses have been declared hostile, we do not wish to draw much attention to their evidences and do not venture to summarise their depositions.

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4. P.W.7 (Keshar Sah) is the Chaukidar and is said to have put his thumb impression on the inquest report (Exhibit-4). He has also been declared hostile. He has stated in his deposition that he had not identified the dead body of the wife of Bokan Singh. He claims to have brought the dead body for the purpose of post-mortem from the police station to Sadar Hospital, Munger, but had not identified the dead body. He has

further deposed that women of the community (*Bhumihar* community), to which she belonged, do not go out of their residence. He had never gone to the residence of appellant no.1. He does not recognise any woman of the house of Bokan Singh. He is capable of recording his signature and has recorded it towards the end of the deposition. He is not aware whether or not the Investigating Officer has put the thumb impression of anybody else on the inquest report (Exhibit.4).

5. P.W.5 (Ram Udit Singh) is the own ***Bahnoi*** of the deceased, and is naturally co-brother of appellant no.1. He claims to have taken leading role in fixing the marriage of the deceased with appellant no.1. She was a resident of village- Lakshminiya, P.S. Baliya, District-Begusarai. He had heard that Krishna Devi died. After having been declared hostile he was cross-examined by the prosecution. He has stated in his deposition that had Krishna Devi been ill, he would have surely come to know of it. He denied to be in collusion with the accused persons and suppressing the correct state of affairs. He was thereafter subjected to cross-examination by the defence. He has stated that he had picked up quarrel with appellant no.1 regarding lands and were no longer on visiting terms. He denies to have ever heard that the deceased was of loose character. He has denied the suggestion that there was

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ever any conflict between the deceased on the one hand, and appellant no.1 and the *Sasural* people, on the other. He has further deposed to the effect that the deceased was a patient of asthma. He has further deposed to the effect that he had gone to the police station to identify the dead body but could not identify the same. He has also deposed to the effect that the deceased died a natural death and not on account of murder.

6. P.W.6 (Radha Krishna Singh) is the full brother of the deceased. He has stated in his deposition that Raj Narain Singh had informed him that the appellants had killed his sister (Krishna Devi), had tied a pitcher (Ghara) in her neck, tied her legs and abandoned it in river Garikhai. The police had recovered the dead body. He had gone straight to Surajgarha police station and was informed by the Investigating Officer that the post-mortem on the dead body was held at Munger Sadar Hospital and the dead body was cremated by the police. One *Saree*, Blouse, Sweater, and bangles allegedly belonging to the deceased were shown to P.W.6 at the police station, who had identified the same to be of Krishna Devi which had been given to her by her *Naihar* people. He further deposed that appellant no.1 and his family members wanted to perform the ritual of *दूधी का भात*, but the co-villagers had not participated in the same. The

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marriage had taken place about five years prior to her death. Her second marriage (*द्विरागमन*) was done after five years of marriage because of their indigent circumstances. He used to visit his other sister married in the same village. He used to be advised that the second marriage should be performed quickly because appellant no.1 had illicit relationship with his elder brother's wife (*भौजाई सुनैना देवी*). The second marriage had taken place about $2\text{-}2^{1}/_{2}$ months before the murder. She was not suffering from any ailment and was quite healthy. According to him, the motive for the murder of Krishna Devi was that appellant no.1 had illicit relationship with his elder brother's wife. He had learnt of the demise of his sister about 6-7 days after she was murdered. He had gone over to village-Surajgarha on the following day. He had received no information of the death from appellant no.1. He has further deposed to the effect that the deceased used to tell him that some of the *Sasural* people did not like her. She used to say that she had some trouble because some of the *Sasural* People did not like her. He has further stated during the course of his cross-examination that the aforesaid personal belongings of the deceased have not been produced in court during the course of his deposition. He has further stated during the course of cross-examination that "*गुलाबी रंग की आंचल*

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सूती साडी थी". He has denied the suggestion that he had taken loan from appellant no.1 giving rise to conflict between them. He also denied the suggestion that he is not a genuine person. He has denied the suggestion that Krishna Devi was suffering from asthma and had died natural death. He also denied the suggestion that she had been cremated at Gauri Shankar Ghat.

7. P.W.8 (Jagdish Singh) was the Civil-Surgeon posted at Madhepura at that point of time and had conducted the post-mortem on the dead body of Krishna Devi. It is relevant to state that he claims to have conducted the post-mortem at 11.30 A.M. on 21.12.1983. He himself did not recognise the dead body, which was identified as the wife of appellant no.1 by Ram Naresh Singh (Constable no.1187), Balgovind Ram (Constable no.1234), Keshar Sah (P.W.7), Tanik Paswan, Dhorha Sah. It is relevant to state that only Keshar Sah among these persons was examined as a prosecution witness. He has proved the post-mortem report which has been marked Exhibit-1. The same reads as follows:

> Held P.M. on the dead body of a female w/o Bokan Singh of village Salempur, P.S. Surajgarha, Munger, and found the following- Riger mortis absent, sodden skin in sole, feet & hands. Peeling fit of skin at places all over the body. Tongue protruded. No froth or foam seen at mouth or nostril. Lung was not discovered nor water came out on cutting the lung. De composite standard-Spleen was almost

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> completely decomposed. No external injury seen on the body. Time elapsed between death and PM - more than 3 days. No definite cause of death can be given. Hence viscera have been preserved- (1) Stomach with its ortem (2) portion of lung-liver-heom-spleen-kidney.

He has deposed to the effect that the aforesaid physical condition of the dead body indicated that death was the result of drowning. He has stated that viscera has been preserved.

8. P.W.10 (Rajendra Prasad Yadav) is Constable no.108 in the office of Public Prosecutor, Khagaria, and has proved the F.I.R. as Exhibit 2, and the Signature thereon as Exhibit-3.

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9. P.W.11 (Ram Sagar Mishra) was the A.S.I. at the Surajgarha Police Station, had conducted the investigation, and had submitted the charge-sheet. He has stated in his deposition that the aforesaid Ram Janam Singh had visited the police station at 13.15 hours on 21.12.1983, and reduced his version into the Fardbeyan (Exhibit-2). The Fardbeyan is in his hand-writing and also bears his signature. Ram Janam Singh had put his signature on that. On the basis of the fardbeyan, a formal F.I.R. was drawn (marked Exhibit-2). He proceeded to the place of occurrence accompanied with Ram Naresh Singh (Constable no.1187), Balgovind Ram (Constable no.1234), Babulal Dharhi, Chaukidar,

Kishundeo Paswan (Chaukidar), and Bhagwat Paswan (Chaukidar) at 13.45 hours. It is relevant to state that none of these constables or Chaukidars have been produced as witnesses. He had recovered the dead body of a woman from Garikhai river whose both legs were tied with rope and the neck was tied with a pitcher. She had on her person a blouse of light brown colour (*मटमैला*) and upon which she was wearing a woolen blouse of biscuit colour (*वादामी रंग*). She had also on her person "*वायल नारंगी रंग की साडी का टुकडा पहने हुए पाया*". The dead body was in highly de-composed position. The place of occurrence is quite lonely. The dead body was taken out of water and was identified by Ram Janam Singh and Keshar Sah (P.W.7) to be the wife of Bokan Singh. It is relevant to state that Ram Janam Singh has not been examined as a witness, and Keshar Sah (P.W.7) has turned hostile. He prepared the inquest report (marked Exhibit-4). Sukhdeo Yadav and Prakash Yadav testified to the same as witnesses. Sukhdeo Yadav is P.W.1. Prakash Yadav has not been examined as a witness. P.W.11 had entrusted the Constables/ Chaukidars mentioned therein to accompany the dead body to Munger Sadar Hospital for post-mortem. Carbon copy of the forwarding letter has been marked Exhibit-5. After returning to the village, he enquired of the appellants but were not traceable. He inspected the residence of appellant no.1 in the

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presence of the informant. He recorded the statement of number of inmates. As per the direction of the Superintendent of Police, Munger, he forwarded the viscera to the Forensic Science Laboratory, Bihar, Patna, for medical report. After conclusion of the investigation, he submitted charge-sheet dated 11.9.1984. He has further stated in his deposition that P.W.3 ((Nand Kumar Singh), P.W.4 (Brahmdeo Singh), and P.W.5 (Ram Udit Singh) had stated before him that it was doubtful whether or not appellant no.1 had , with the collusion of his family members, murdered Krishna Devi. P.Ws.4 and 5 had also stated before him during the course of investigation that had Krishna Devi been ill they would have surely come to know of it. He had further deposed to the effect that he had preserved in the police station the aforesaid two blouses, the piece of *saree* and bangles of the deceased. He has also stated that P.W.6 (Radha Krishna Singh) had identified the aforesaid articles of the deceased at the police station on 24.12.1983. He has identified the signature of Ram Janam Singh at the foot of the fardbeyan. He has denied the suggestion that it was not the signature of Ram Janam Singh. He has further stated that P.W.6 has stated before him on 24.12.1983 that he had come on the information (*न्योता*) of appellant no.1. He has also stated that P.W.6 had not stated before him that he had

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learnt of the death from Raj Narain Singh (the alleged informant). He has also stated that the aforesaid personal belongings of the deceased were not before him during the course of his deposition.

10. As stated hereinabove, the following documents have been proved by the prosecution witnesses:

(i) Exhibit-1, the post-mortem report, proved by P.W.8.

(ii) Exhibit-2, the F.I.R., proved by P.W.11.

(iii) Exhibit-3, the fardbeyan, proved by P.W.11.

(iv) Exhibit-4, Inquest report, proved by P.W.11.

(v) Exhibit-5, carbon copy of the letter (*कमान*) for post-mortem, proved by P.W.11.

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11. The defence has examined 9 witnesses in support of its defence. D.W.1 (Dhana Singh) is the local Sarpanch. He has deposed to the effect that wife of Bokan Singh died and she was cremated as per the Hindu rites at Gauri Shankar Ghat. He was present at the time of cremation. D.W.3 (Ram Bilash Singh), D.W.4 (Satya Narayan Singh), Raso Singh etc. were also present. Few Majdoors like Baso Tati, Jawahar Sah were also present. Bhola Pandit (D.W.6) was also present. The rituals of "*दूधी और दशकर्म*" was also observed. *कंटाही पंडित* (Lal Babaji) had also participated in the rituals.

He has further stated to the effect that Krishna Devi had died on account of asthma. He has denied the suggestion that the dead body was tied with pitcher and abandoned in the river. He had denied the suggestion that the police had recovered her dead body and had the post-mortem done. Then he added voluntarily that the police had after 4-5 days got another dead body which was subjected to post-mortem. He denied the suggestion that appellant no.1 had illicit relationship with his elder brother's wife.

12. D.W.2 (Suresh Singh) is a local cultivator and claims to be acquainted with the family members of appellant no.1. His wife died on 12.12.1983. Appellant no.1 and his wife were of good moral character. She died of asthma. Her dead body was cremated at Gauri Shankar Ghat at Surajgarha in the presence of a few names mentioned therein including D.Ws.1, 2 and 6. Suresh Dom was paid for providing fire for the cremation. The dead body was completely burnt. The ritual of "*दूधी भात*" had taken place. Other rituals of "*श्राद्ध*" were performed. Money was demanded from Radha Krishna Singh (P.W.6) and Madhusudan Singh who expressed difficulty and said that the same shall be handed over after selling the buffalo.

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13. D.W.3 is Ram Bilash Singh who runs a medical shop. He claims to recognise appellant no.1 as

well as his wife. He has deposed to the effect that she was a patient of asthma. The agnates were present at the time of her cremation. Bokan Singh had applied the fire to the funeral pyre in the traditional attire along with other persons present there. He had denied the suggestion that the wife of appellant no.1 was murdered and abandoned in the Garikhai river. He has further deposed to the effect that the police had caused post-mortem on an unclaimed dead body. No person of the village had identified that dead body. He has further stated that he had seen the dead body of Krishna Devi and was present at the time of her cremation.

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14. D.W.4 (Satya Narayan Singh) is a local cultivator. He claims to known appellant no.1, his brothers, uncle etc. as well as the deceased. She died on 12.12.1983 on account of asthma. He had gone to see her at that point of time and found spitting and cough around her. She was taken to Gauri Shankar Ghat for cremation. D.Ws.6, 8, 3, 2, Bajo Singh etc. were also present at the time of cremation. He claims to have attended the wedding of appellant no.1 and had seen Krishna Devi. The ritual of "*दूधी भात*" had taken place. He has further stated that the police had thereafter ensured post-mortem on an unclaimed dead body and had given the name of Krishna Devi. The same was at the

instance of her brother because he had differences with Bokan Singh for financial reason.

15. D.W.5 is Lal Jha and is engaged in the avocation of performing Hindu rituals (*जजमानिका वृत्ति*). He claims to have known appellant no.1 and his family members. He had conducted the rituals of 11 days Shradh of the deceased.

16. D.W.6 is Bhola Pandey and is engaged in the avocation of performing Hindu rituals (*जजमानिका वृत्ति*). He claims to be ***Purohit*** of village Salempur and known to appellant no.1 and his family members. He was also ***Purohit*** at the time of marriage of appellant no.1. He recognised his wife. She died on account of asthma on 12.12.1983. He had conducted the rituals at the time of her cremation and Suresh Dom was paid for the funeral. Raso Singh, D.W.4, D.W.2, D.W.3, D.W.8 etc. were also present at the time of cremation. The dead body was fully burnt. He had never heard about immoral character of the deceased.

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17. D.W.7 is Sadhu Thakur and is a barber by profession. He knows the family of appellant no.1. He had shaved the heads of the family members at the time of *Shradh.* She had died on account of asthma. She used to expectorate cough.

18. D.W.8 (Basudeo Tanti) is a local labourer and a neighbour of appellant no.1. The dead

body of the deceased was cremated at Gauri Shankar Ghat. D.W.2, Satan Singh, Daso Singh, Ram Ratan Singh, appellant no.1, appellant no.2 and others were present at the time of cremation. He was also present at the time of cremation.

19. D.W.9 is Upendra Singh and is a doctor by profession. He was posted in the Government Hospital, Surajgarha, earlier. He had treated Krishna Devi for asthma. He proved her prescriptions as well as the X-ray report which has been marked Exhibits A, A/1, A/2, A/3, Exhibit-B, Exhibit-C. He has deposed to the effect that asthma can lead to heart failure and death. He has further deposed to the effect that it appears from the prescriptions marked exhibits A, A/1, A/2, A/3, Exhibits- B and C that she was treated for ordinary asthma and she was not treated for serious kind of asthma. One prescription was under the signature of D.W.9 and others were under the signature of other doctors.

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20. As stated hereinabove, the defence witnesses have proved the following documents:

(i) Exhibit A/1 is the prescription dated 1.12.1983 on the letter head of D.W.9, and under his signature. It, inter alia, states that she was treated for breathlessness and was given a number of medicines.

(ii) Exhibit-A/2 is the prescription of Government Hospital, Balia, Begusarai, on the letter head of Dr. P.N. Rai which has entries of 1982 including those of 8.10.1982 and 19.10.1982.

(iii) Exhibit-A/3 is the medical prescription on the letter head of Dr. S.S. Afaque who was then Assistant Civil-Surgeon at Balia (Begusarai). He seems to have treated Krishna Devi for breathlessness, cough and fever. She was diagnosed for "Asthmaticus".

(iv) Exhibit-B is the duplicate copy of X-ray plate of the chest of Krishna Devi.

(v) Exhibit-C is the report of the radiologist, Ashok Upadhyay, issued on 13.12.1987, indicating therein that the X-ray was taken on 5.10.1982, the report was issued on 13.12.1987, at the request of the party of the patient. It says that Krishna Devi was suffering from Bronchitis with Emphysema.

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21. The accused persons pleaded not guilty of the charges and claimed to be tried. They denied the prosecution allegations during the course of their statement under Section 313 of the Code of Criminal Procedure. They have put up the defence that Krishna Devi was a patient of asthma and had died on account of the same. She was cremated according to the Hindu rites, and the *Shradh* had taken place. They have also set up the defence that P.W.6, the ***Sala*** of appellant no.1, had

taken loan from the latter, which he had declined to return and had, therefore, given false evidence.

22. On a consideration of the materials on record indicated hereinabove, the learned trial court held that the appellants herein were guilty of the murder of Krishna Devi, and the dead body had been identified. The prosecution case is supported by the medical evidence. He has also disbelieved the plea set up by the defence that she died on account of asthma. The learned trial court was of the view that she was a patient of simple asthma. He has also believed the prosecution case to the effect that appellant no.1 had developed illicit relationship with his elder brother's wife, and Krishna Devi was coming in his way because she had returned from her *Naihar* after *Gauna*. He has also opined that there is no direct evidence of murder and has, for this reason, acquitted appellant nos.2 to 4 of the charge under section 302/34 of the IPC. The learned trial court is also of the view that Krishna Devi was under the care and custody of her husband and, therefore, the liability of her murder was bound to be fastened on the husband. He has also come to the conclusion that the dead body could not have been carried to the river by appellant no.1 alone and has, therefore, found the four appellants guilty under section 201 of the IPC.

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23. The obvious question which falls for determination of this Court is whether or not the appellants are guilty of the murder of Krishna Devi in terms of section 302 read with section 34, as well as 201 of the I.P.C. It appears to us on a perusal of the materials on record that the prosecution has to prove whether or not Krishna Devi was murdered earlier and thereafter abandoned in the river in the manner suggested by it, or tied in the manner suggested by it and then thrown in the river to die. It is manifest from a plain reading of the post-mortem report as well as the deposition of P.W.8 that there were no mark of strangulation or any other kind of physical violence on the body of the deceased. Therefore, it is not possible to deduce that she was earlier murdered and then abandoned in the river. On the other hand, if she was tied in the manner suggested by the prosecution and abandoned in the water alive, then she must have swallowed water along with weeds, leaves etc., which were not found. There is no evidence to suggest that she had not drunk water, nor weeds, leaves etc. were found at or in her mouth. Neither the viscera nor the forensic report of the viscera has been brought on record to prove whether or not water was found within the body. P.W.11 (the I.O.) has deposed to the effect that viscera has been sent for forensic report, but

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non-production has not been explained. It is curious to note that prosecution has not brought on record the material objects like pitcher said to have been tied with the neck of the deceased, nor the rope with which her legs were tied. This is also a serious lacuna in the prosecution case. In other words, the prosecution has not been able to prove the either possibility. The mode and manner of occurrence and the genesis of death, has not been proved.

24. This takes me on to the question of identification of the dead-body. As stated hereinabove, the prosecution has examined altogether 11 witnesses to prove the charges. P.Ws.1, 2, 3, 4, 5, 7 and 9 are co-villagers who have not claimed to have identified the dead body and have indeed turned hostile. P.W.6 (Radha Krishna Singh) is the full brother of the deceased and is an important witness. He had reached the village quite a few days after the dead body was found by which time the police had completed the post-mortem and had itself cremated the dead body. It is strange to find from the deposition of P.W.6 as well as P.W.11 (the I.O.) that the police had performed the act of cremation which is quite objectionable in the Hindu society of this country, and the normal practice is that the dead body after post-mortem, is handed over to the family members. The prosecution has not in the

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least made attempt to explain as to why the dead body was not handed over to the family members which has a direct bearing on the question of identification. Coming back to the deposition of P.W.6 that he had straightway gone to police station after he had reached the village, introduced himself to the Investigating Officer who had placed before him the *Saree*, Blouse, Sweater and the bangles allegedly of the deceased. P.W.6 claims to have identified them of Krishna Devi which had been given by the *Naihar* people to her. In view of his deposition that the second marriage (*गौना*) had taken place only $2\text{-}2^{1}/_{2}$ months prior to the death, it would be in the natural course that the brother would remember the articles given to the sister at the time of the second marriage (*गौना*), but the prosecution has once again struck a fatal blow to the prosecution case by not marking them as material exhibits. P.W.6 as well as P.W.11 in their cross-examination stated that the said personal belongings of the deceased have not been marked exhibits. An important piece of evidence in the given situation to identify the deceased is completely absent. There is no other material on record which can help us in identifying the deceased, or any other material object to connect the same with the deceased. P.W.5 is the own ***Bahnoi*** of the deceased, was aged 40 years at the time of his deposition on

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11.3.1987. Naturally, therefore, he must have seen the deceased from the days of her childhood. He claims to have taken a leading role in fixing her marriage and yet he was unable to identify the dead body which also creates serious doubt about the identification of the dead body. We are mindful of the position that he has been declared hostile. Furthermore, the wife of P.W.5 is the full sister of the deceased and the prosecution has offered no explanation as to why the dead body was not shown to her for the purpose of identification who was the best person to identify the dead body. These aspects of the case appear to us to be fatal to, and strike at the root of, the prosecution case. We are, therefore, of the view that the prosecution has not been able to prove that the dead body found in the Garikhai river was of Krishna Devi.

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25. We are mindful of the situation that the deceased was a young woman and had returned to her *Sasural* only 2½ months earlier. The learned trial court has, therefore, approached this question from an appropriate angle. It has been observed as follows in paragraph 14 of the impugned judgment:

> "…The responsibility in the absence of any direct evidence must be fixed on the husband under whose guardianship the deceased lady was placed by her father and mother. Hence, the liability of murder of Krishna Devi is bound to be fixed on the husband's head…".

26. In a case of circumstantial evidence like the present one, it becomes the duty of the defence to explain whether or not the deceased is alive. If not, what was the reason for her death? The defence has set up a clear case that the deceased was a bad case of asthma and had died on account of the same. P.W.5, D.Ws.1, 2, 3, 4, 6, 7 and 9 have consistently deposed to the same effect. D.W.9 (Dr. Upendra Singh) was a Medical Officer posted at the same village and claims to have treated Krishna Devi. The medical report as well as the X-ray report including his own prescriptions have been brought on record and are pointer to her medical condition, namely, that she was a bad case of asthma. It is clearly supported by the x-ray report and the Radiologist's opinion that she was suffering from Bronchitis with Emphysema. She was given injections from time to time. It is supported by the medical jurisprudence that Bronchitis with Emphysema can lead to death. I must state that the learned Public Prosecutor has attempted to find fault with the evidentiary value of the prescriptions. Taking into account a complete view of these prescriptions accompanied with the evidence of D.W.9 as well as the oral evidence of P.W.5, D.Ws.1, 2, 3, 4, 6, 7 and 9, it appears to us that she was a bad case of asthma. D.W.9

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has stated in his deposition that "*दम्मा का रोगी किसी भी वक्त हृदय गति रुक जाने से मर सकता है*". We, therefore, conclude that the defence had been able to set up a fairly credible case that Krishna Devi was suffering from acute asthma which was possibly the reason for her demise.

27. The defence has also set up its case that it is a case of false implication. D.Ws.4 and 7 have deposed to the effect that P.W.6 (Radha Krishna Singh), the full brother of the deceased, had taken loan from appellant no.1, had declined to return the same leading to serious misunderstanding between them. They have also tried to establish that P.W.6 got an opportunity, inasmuch as the dead body of an unknown/unidentified girl was found abandoned in the river, and in collusion with the police used the opportunity to falsely implicate the appellants. This part of the defence case is reasonably supported by the defence witnesses. Furthermore, suggestions to that effect were made to some of the prosecution witnesses though they have denied the same. This has to be read with the deposition of P.W.6 that they are in indigent circumstances, and the custom of ***Gauna*** had not taken place for five years on account of their poverty. It was further suggested to P.W.6 in his cross-examination that the money was utilised to obtain employment of the brother of P.W.6, though he had denied the same. In

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view of the evidence placed on record by the defence, we cannot brush aside this part of the defence case and chances of false implication of the appellants cannot be overruled.

28. Another aspect of the matter is that the cremation takes place of the actual dead body. According to the Hindu rites, the *Shradh c*omprising of a series of rituals covering a period of 11-13 days can be performed even if the family had not the opportunity of cremating the dead body. We have already discussed hereinabove that the prosecution has not offered any explanation as to why the dead body after post-mortem was not handed over to the family members for cremation and why the police had taken initiative to cremate the dead body itself without participation of the family members. This to our mind is a serious lacuna in the prosecution case. We would go further to state that number of witnesses including D.Ws.1, 2, 3, 4, 6, 7 and 8 have consistently deposed to the effect that the family members had performed the cremation, fire had been applied to the funeral pyre by appellant no.1 (husband). Money was paid to Suresh Dom for providing fire for the purpose. The two *Pandits* who were present at the time of cremation, apart from a number of agnates, co-villagers, and other family members have also deposed to the effect that cremation was followed

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by the ritual of "दूधी भात" by the agnates and had taken place at the residence of the deceased soon after the agnates had returned from cremation ground. The evidence of the defence witnesses to the effect that the family had performed the cremation of the dead body of Krishna Devi also sounds credible.

29. To conclude, we are of the view that the prosecution has not been able to prove its case. It has not been able to prove that Krishna Devi died on account of drowning in river Garikhai. It has also not been able to prove the identification of the dead body, being that of Krishna Devi. On the other hand, the defence has been able to reasonably explain that she had died on account of acute asthma. This was followed by her cremation at Gauri Shankar Ghat in the village and fire was administered by appellant no.1. They have also been able to reasonably prove the chances of false implication. In that view of the matter, we are left with no option but to acquit the accused persons.

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30. Before we part with the records, we must record our extreme sense of displeasure against the role of the police in the case. The police conducted the investigation in a most perfunctory and unsatisfactory manner, did not do their elementary duty of bringing on record all material objects like the clothes and the bangles which were allegedly on the

dead body, which were taken into possession by the police and were at a later date shown to P.W.6 and yet not marked as material exhibits. The pot allegedly tied to the neck of the deceased, and the piece of rope with which her legs were allegedly tied, were also not marked as materials exhibits. The prosecution has also offered no explanation as to why viscera and its forensic report were not placed on record. We are left with strong suspicion of false implication of the appellants at the instance of the police.

31. In the result, this appeal is allowed. The impugned judgment dated 30.1.1988, passed in Sessions Trial No.320 of 1985, is hereby set aside, and the accused persons (the appellants herein) are acquitted of all the charges. They are discharged from the liability of their bail bonds.

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(Sudhir Kumar Katriar, J.)

(Samarendra Pratap Singh, J.)

PATNA HIGH COURT, PATNA
Dated the 1st day of July, 2008
S.K.Pathak/(N.A.F.R.)

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